

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

SENATE BILL NO. 217

95TH GENERAL ASSEMBLY

2009

0997S.01T

AN ACT

To repeal sections 347.183, 351.225, and 359.681, RSMo, and to enact in lieu thereof three new sections relating to corporate shareholders' meetings.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 347.183, 351.225, and 359.681, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 347.183,
3 351.225, and 359.681, to read as follows:

347.183. In addition to the other powers of the secretary established in
2 sections 347.010 to 347.187, the secretary shall, as is reasonably necessary to
3 enable the secretary to administer sections 347.010 to 347.187 efficiently and to
4 perform the secretary's duties, have the following powers including, but not
5 limited to:

6 (1) The power to examine the books and records of any limited liability
7 company to which sections 347.010 to 347.187 apply, and it shall be the duty of
8 any manager, member or agent of such limited liability company having
9 possession or control of such books and records, to produce such books and
10 records for examination on demand of the secretary or his designated employee;
11 except that no person shall be subject to any criminal prosecution on account of
12 any matter or thing which may be disclosed by examination of any limited
13 liability company books and records, which they may produce or exhibit for
14 examination; or on account of any other matter or thing concerning which they
15 may make any voluntary and truthful statement in writing to the secretary or his
16 designated employee. All facts obtained in the examination of the books and
17 records of any limited liability company, or through the voluntary sworn
18 statement of any manager, member, agent or employee of any limited liability
19 company, shall be treated as confidential, except insofar as official duty may
20 require the disclosure of same, or when such facts are material to any issue in

21 any legal proceeding in which the secretary or his designated employee may be
22 a party or called as witness, and, if the secretary or his designated employee
23 shall, except as provided in this subdivision, disclose any information relative to
24 the private accounts, affairs, and transactions of any such limited liability
25 company, he shall be guilty of a class C misdemeanor. If any manager, member
26 or registered agent in possession or control of such books and records of any such
27 limited liability company shall refuse a demand of the secretary or his designated
28 employee, to exhibit the books and records of such limited liability company for
29 examination, such person shall be guilty of a class B misdemeanor;

30 (2) The power to cancel or disapprove any articles of organization or other
31 filing required under sections 347.010 to 347.187, if the limited liability company
32 fails to comply with the provisions of sections 347.010 to 347.187 by failing to file
33 required documents under sections 347.010 to 347.187, by failing to maintain a
34 registered agent, by failing to pay the required filing fees, by using fraud or
35 deception in effecting any filing, by filing a required document containing a false
36 statement, or by violating any section or sections of the criminal laws of Missouri,
37 the federal government or any other state of the United States. Thirty days
38 before such cancellation shall take effect, the secretary shall notify the limited
39 liability company with written notice, either personally or by certified mail,
40 deposited in the United States mail in a sealed envelope addressed to such
41 limited liability company's last registered agent in office, or to one of the limited
42 liability company's members or managers. Written notice of the secretary's
43 proposed cancellation to the limited liability company, domestic or foreign, shall
44 specify the reasons for such action. The limited liability company may appeal
45 this notice of proposed cancellation to the circuit court of the county in which the
46 registered office of such limited liability company is or is proposed to be situated
47 by filing with the clerk of such court a petition setting forth a copy of the articles
48 of organization or other relevant documents and a copy of the proposed written
49 cancellation thereof by the secretary, such petition to be filed within thirty days
50 after notice of such cancellation shall have been given, and the matter shall be
51 tried by the court, and the court shall either sustain the action of the secretary
52 or direct him to take such action as the court may deem proper. An appeal from
53 the circuit court in such a case shall be allowed as in civil action. The limited
54 liability company may provide information to the secretary that would allow the
55 secretary to withdraw the notice of proposed cancellation. This information may
56 consist of, but need not be limited to, corrected statements and documents, new

57 filings, affidavits and certified copies of other filed documents;

58 (3) The power to rescind cancellation provided for in subdivision (2) of this
59 section upon compliance with either of the following:

60 (a) The affected limited liability company provides the necessary
61 documents and affidavits indicating the limited liability company has corrected
62 the conditions causing the proposed cancellation or the cancellation; or

63 (b) The limited liability company provides the correct statements or
64 documentation that the limited liability company is not in violation of any section
65 of the criminal code; and

66 (4) The power to charge late filing fees for any filing fee required under
67 sections 347.010 to 347.187 and the power to impose civil penalties as provided
68 in section 347.053. Late filing fees shall be assessed at a rate of ten dollars for
69 each thirty-day period of delinquency;

70 **(5) (a) The power to administratively cancel an articles of**
71 **organization if the limited liability company's period of duration stated**
72 **in articles of organization expires.**

73 **(b) Not less than thirty days before such administrative**
74 **cancellation shall take effect, the secretary shall notify the limited**
75 **liability company with written notice, either personally or by mail. If**
76 **mailed, the notice shall be deemed delivered five days after it is**
77 **deposited in the United States mail in a sealed envelope addressed to**
78 **such limited liability company's last registered agent and office or to**
79 **one of the limited liability company's managers or members.**

80 **(c) If the limited liability company does not timely file an**
81 **articles of amendment in accordance with section 347.041 to extend the**
82 **duration of the limited liability company, which may be any number of**
83 **years or perpetual, or demonstrate to the reasonable satisfaction of the**
84 **secretary that the period of duration determined by the secretary is**
85 **incorrect, within sixty days after service of the notice is perfected by**
86 **posting with the United States Postal Service, then the secretary shall**
87 **cancel the articles of organization by signing an administrative**
88 **cancellation that recites the grounds for cancellation and its effective**
89 **date. The secretary shall file the original of the administrative**
90 **cancellation and serve a copy on the limited liability company as**
91 **provided in section 347.051.**

92 **(d) A limited liability company whose articles of organization has**

93 been administratively cancelled continues its existence but may not
94 carry on any business except that necessary to wind up and liquidate
95 its business and affairs under section 347.147 and notify claimants
96 under section 347.141.

97 (e) The administrative cancellation of an articles of organization
98 does not terminate the authority of its registered agent.

99 (6) (a) The power to rescind an administrative cancellation and
100 reinstate the articles of organization.

101 (b) Except as otherwise provided in the operating agreement, a
102 limited liability company whose articles of organization has been
103 administratively cancelled under subdivision (5) of this section may file
104 an articles of amendment in accordance with section 347.041 to extend
105 the duration of the limited liability company, which may be any
106 number or perpetual.

107 (c) A limited liability company whose articles of organization has
108 been administratively cancelled under subdivision (5) of this section
109 may apply to the secretary for reinstatement. The applicant shall:

110 a. Recite the name of the limited liability company and the
111 effective date of its administrative cancellation;

112 b. State that the grounds for cancellation either did not exist or
113 have been eliminated, as applicable, and be accompanied by
114 documentation satisfactory to the secretary evidencing the same;

115 c. State that the limited liability company's name satisfies the
116 requirements of section 347.020;

117 d. Be accompanied by a reinstatement fee in the amount of one
118 hundred dollars, or such greater amount as required by state
119 regulation, plus any delinquent fees, penalties, and other charges as
120 determined by the secretary to then be due.

121 (d) If the secretary determines that the application contains the
122 information and is accompanied by the fees required in paragraph (c)
123 of this subdivision and that the information and fees are correct, the
124 secretary shall rescind the cancellation and prepare a certificate of
125 reinstatement that recites his or her determination and the effective
126 date of reinstatement, file the original articles of organization, and
127 serve a copy on the limited liability company as provided in section
128 347.051.

129 (e) When the reinstatement is effective, it shall relate back to

130 and take effect as of the effective date of the administrative
131 cancellation of the articles of organization and the limited liability
132 company may continue carrying on its business as if the administrative
133 cancellation had never occurred.

134 (f) In the event the name of the limited liability company was
135 reissued by the secretary to another entity prior to the time application
136 for reinstatement was filed, the limited liability company applying for
137 reinstatement may elect to reinstate using a new name that complies
138 with the requirements of section 347.020 and that has been approved by
139 appropriate action of the limited liability company for changing the
140 name thereof.

141 (g) If the secretary denies a limited liability company's
142 application for reinstatement following administrative cancellation of
143 the articles of organization, he or she shall serve the limited liability
144 company as provided in section 347.051 with a written notice that
145 explains the reason or reasons for denial.

146 (h) The limited liability company may appeal a denial of
147 reinstatement as provided for in subdivision (2) of this section.

148 (7) Subdivision (6) of this section shall apply to any limited
149 liability company whose articles of organization was cancelled because
150 such limited liability company's period of duration stated in the
151 articles of organization expired on or after August 28, 2003.

351.225. 1. (1) Meetings of shareholders may be held at such place,
2 either within or without this state, as may be provided in the bylaws. In the
3 absence of any such provisions, all meetings shall be held at the registered office
4 of the corporation in this state.

5 (2) If authorized by the board of directors in its sole discretion,
6 and subject to such guidelines and procedures as the board of directors
7 may adopt, shareholders and proxyholders not physically present at a
8 meeting of shareholders may, by means of remote communication:

9 (a) Participate in a meeting of shareholders; and

10 (b) Be deemed present in person and vote at a meeting of
11 shareholders, whether such meeting is to be held at a designated place
12 or solely by means of remote communication, provided that:

13 a. The corporation shall implement reasonable measures to
14 verify that each person deemed present and permitted to vote at the
15 meeting by means of remote communication is a shareholder or

16 **proxyholder;**

17 **b. The corporation shall implement reasonable measures to**
18 **provide such shareholders and proxyholders a reasonable opportunity**
19 **to participate in the meeting and to vote on matters submitted to the**
20 **shareholders, including an opportunity to read or hear the proceedings**
21 **of the meeting substantially concurrently with such proceedings; and**

22 **c. If any shareholder or proxyholder votes or takes other action**
23 **at the meeting by means of remote communication, a record of such**
24 **vote or other action shall be maintained by the corporation.**

25 2. An annual meeting of shareholders for the election of directors shall be
26 held on a day which each corporation shall fix by its bylaws; and if no day be so
27 provided, then on the second Monday in the month of January. Failure to hold
28 the annual meeting at the designated time shall not work a forfeiture or
29 dissolution of the corporation.

30 3. Special meetings of the shareholders may be called by the board of
31 directors or by such other person or persons as may be authorized by the articles
32 of incorporation or the bylaws.

359.681. In addition to the power and authority given the secretary of
2 state by this chapter, the secretary of state or his designee shall have such
3 further authority as is reasonably necessary to enable the secretary of state to
4 administer this chapter efficiently and to perform the secretary of state's
5 duties. This authority shall consist of, but is not limited to, the following powers:

6 (1) (a) The power to examine the books and records of any limited
7 partnership to which this chapter applies, and it shall be the duty of any general
8 partner or agent of such limited partnership to produce such books and records
9 for examination on demand of the secretary of state or designated employee;
10 provided, that no person shall be subject to any criminal prosecution on account
11 of any matter or thing which may be disclosed by the examination of any limited
12 partnership books, or records, which they may produce or exhibit for examination;
13 or on account of any matter or thing concerning which they may make any
14 voluntary and truthful statement in writing to the secretary of state, or
15 designated employee. All facts obtained in the examination of the books and
16 records of any limited partnership, or through voluntary sworn statement of any
17 partner, agent, or employee of any limited partnership, shall be treated as
18 confidential, except insofar as official duty may require the disclosure of same; or
19 when such facts are material to any issue in any legal proceeding in which the

20 secretary of state or designated employee may be a party or called as a witness,
21 and, if the secretary of state or designated employee shall, except as herein
22 provided, disclose any information relative to the private accounts, affairs, and
23 transactions of any such limited partnership, he shall be deemed guilty of a class
24 C misdemeanor.

25 (b) If any general partner, or registered agent, of any such limited
26 partnership shall refuse the demand of the secretary of state, or designated
27 employee, to exhibit the books and records of such limited partnership for
28 examination, he, or they, shall be deemed guilty of a class B misdemeanor.

29 (2) (a) The power to cancel or disapprove any certificate of limited
30 partnership or other filing required under this chapter, if the limited partnership
31 fails to comply with the provisions of this chapter by failing to file required
32 documents under this chapter by failing to maintain a registered agent, by failing
33 to pay the required filing fees, by using fraud or deception in effecting any filing,
34 by filing a required document containing a false statement, or by violating any
35 section or sections of the criminal laws of Missouri, the federal government or any
36 other state of the United States. Thirty days before such cancellation shall take
37 effect, the secretary of state shall notify the limited partnership with written
38 notice, either personally or by mail. If mailed, the notice shall be deemed
39 delivered five days after it is deposited in the United States mail in a sealed
40 envelope addressed to such limited partnership's last registered agent and office
41 or to one of the limited partnership's general partners. The written notice of the
42 secretary of state's proposed cancellation to the limited partnership, domestic or
43 foreign, will specify the reasons for such action.

44 (b) The limited partnership may appeal this notice of proposed
45 cancellation to the circuit court of the county in which the registered office of
46 such limited partnership is or is proposed to be situated by filing with the clerk
47 of such court a petition setting forth a copy of the certificate of limited
48 partnership or other relevant documents and a copy of the proposed written
49 cancellation thereof by the secretary of state, such petition to be filed within
50 thirty days after notice of such cancellation shall have been given, and the matter
51 shall be tried by the court, and the court shall either sustain the action of the
52 secretary of state or direct him to take such action as the court may deem proper.
53 An appeal from the circuit court in such a case shall be allowed as in civil action.

54 (c) The limited partnership may provide information to the secretary of
55 state that would allow the secretary of state to withdraw the notice of proposed

56 cancellation. This information may consist of, but need not be limited to,
57 corrected statements and documents, new filings, affidavits and certified copies
58 of other filed documents.

59 (3) The power to rescind a cancellation provided for in subsection 2 of this
60 section upon compliance with either of the following:

61 (a) The affected limited partnership provides the necessary documents
62 and affidavits indicating the limited partnership has corrected the conditions
63 causing the proposed cancellation or the cancellation;

64 (b) The limited partnership provides the correct statements or
65 documentation that the limited partnership is not in violation of any section of
66 the criminal code.

67 (4) The power to charge late filing fees for any filing fee required under
68 this chapter. Late filing fees shall be assessed at a rate of ten dollars for each
69 thirty-day period of delinquency.

70 (5) (a) **The power to administratively cancel a certificate of**
71 **limited partnership if the limited partnership's period of duration**
72 **stated in the certificate of limited partnership expires.**

73 (b) **Not less than thirty days before such administrative**
74 **cancellation shall take effect, the secretary of state shall notify the**
75 **limited partnership with written notice, either personally or by mail. If**
76 **mailed, the notice shall be deemed delivered five days after it is**
77 **deposited in the United States mail in a sealed envelope addressed to**
78 **such limited partnership's last registered agent and office or to one of**
79 **the limited partnership's general partners.**

80 (c) **If the limited partnership does not timely file a certificate of**
81 **amendment in accordance with section 359.101 to extend the duration**
82 **of the limited partnership, which may be any number of years or**
83 **perpetual, or demonstrate to the reasonable satisfaction of the**
84 **secretary of state that the period of duration determined by the**
85 **secretary of state is incorrect, within sixty days after service of the**
86 **notice is perfected by posting with the United States Postal Service,**
87 **then the secretary of state shall cancel the certificate of limited**
88 **partnership by signing a certificate of administrative cancellation that**
89 **recites the grounds for cancellation and its effective date. The**
90 **secretary of state shall file the original of the certificate and serve a**
91 **copy on the limited partnership as provided in section 359.141.**

92 (d) A limited partnership whose certificate of limited
93 partnership has been administratively cancelled continues its existence
94 but may not carry on any business except that necessary to wind up
95 and liquidate its business and affairs under section 359.471 and notify
96 claimants under section 359.481.

97 (e) The administrative cancellation of a certificate of limited
98 partnership does not terminate the authority of its registered agent.

99 (6) (a) The power to rescind an administrative cancellation and
100 reinstate the certificate of limited partnership.

101 (b) Except as otherwise provided in the partnership agreement,
102 a limited partnership whose certificate of limited partnership has been
103 administratively cancelled under subdivision (5) of this section may file
104 a certificate of amendment in accordance with section 359.101 to extend
105 the duration of the limited partnership, which may be any number or
106 perpetual.

107 (c) A limited partnership whose certificate of limited partnership
108 has been administratively cancelled under subdivision (5) of this
109 section may apply to the secretary of state for reinstatement. The
110 applicant shall:

111 a. Recite the name of the limited partnership and the effective
112 date of its administrative cancellation;

113 b. State that the grounds for cancellation either did not exist or
114 have been eliminated, as applicable, and be accompanied by
115 documentation satisfactory to the secretary of state evidencing the
116 same;

117 c. State that the limited partnership's name satisfies the
118 requirements of section 359.021;

119 d. Be accompanied by a reinstatement fee in the amount of one
120 hundred dollars, or such greater amount as required by state
121 regulation, plus any delinquent fees, penalties, and other charges as
122 determined by the secretary of state to then be due.

123 (d) If the secretary of state determines that the application
124 contains the information and is accompanied by the fees required in
125 paragraph (c) of this subdivision and that the information and fees are
126 correct, the secretary of state shall rescind the certificate of
127 administrative cancellation and prepare a certificate of reinstatement
128 that recites his or her determination and the effective date of

129 reinstatement, file the original of the certificate, and serve a copy on
130 the limited partnership as provided in section 359.141.

131 (e) When the reinstatement is effective, it shall relate back to
132 and take effect as of the effective date of the administrative
133 cancellation of the certificate of limited partnership and the limited
134 partnership may continue carrying on its business as if the
135 administrative cancellation had never occurred.

136 (f) In the event the name of the limited partnership was reissued
137 by the secretary of state to another entity prior to the time application
138 for reinstatement was filed, the limited partnership applying for
139 reinstatement may elect to reinstate using a new name that complies
140 with the requirements of section 359.021 and that has been approved by
141 appropriate action of the limited partnership for changing the name
142 thereof.

143 (g) If the secretary of state denies a limited partnership's
144 application for reinstatement following administrative cancellation of
145 the certificate of limited partnership, he or she shall serve the limited
146 partnership as provided in section 359.141 with a written notice that
147 explains the reason or reasons for denial.

148 (h) The limited partnership may appeal a denial of reinstatement
149 as provided for in paragraph (b) of subdivision (2) of this section.

150 (7) Subdivision (6) of this section shall apply to any limited
151 partnership whose certificate of limited partnership was cancelled
152 because such limited partnership's period of duration stated in the
153 certificate of limited partnership expired on or after August 28, 2003.

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